

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA
DIVISION II

DYLAN TURNER,
RHIANNON TURNER,
RONAN TURNER, by their next friend and parent
Diane Turner, and
DIANE TURNER, individually and on her own behalf,

Plaintiffs,

v.

Civil Action No.: 06-C-717
Judge Christopher Wilkes

CHARLES TURNER, SR.,
CHARLES TURNER, JR., and
LAURIE TURNER,

Defendants.

ORDER

On a prior date came the plaintiff, Diane Turner, in person and by her counsel, Brenda Waugh, Attorney at Law, L.C., and came the plaintiffs, Ronan, Rhiannon, and Dylan Turner, by counsel, Brenda Waugh Attorney at Law, L.C., and came the defendants Charles Turner, Sr., Charles Turner Jr., and Laurie Turner and the notice defendant, Nationwide, by counsel Michael Lorensen, and came City Hospital, Inc. Group Benefits Plan (hereinafter "The Plan"), the intervenor, by counsel Christine Vaglienti, and came the duly appointed Guardian Ad Litem for the said plaintiffs, Ronan, Rhiannon, and Dylan Turner, Tim Helman, upon the PETITION filed by the plaintiffs seeking court approval of a settlement reached between the plaintiffs and the defendants. Whereupon the plaintiffs requested that the Court reduce the lien asserted by the intervenor, The Plan., and the Court set this matter for briefing.

1-15-06
C. Vaglienti
B. Waugh
T. Helman
M. LORENSEN

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CLERK OF COURT
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SHELDON

Upon receipt and review of the briefs and memorandum filed by the parties and the proffers of the parties in court and by exhibits, the Court makes the following findings of fact. Said findings are made solely for the purpose of the adjudication of the infant settlement proceeding and shall not be binding on this Court in the event that the settlement is not approved and ratified by this court.

FINDINGS OF FACT

1. The plaintiffs, Ronan, Rhiannon, and Dylan Turner are infant children who reside in Berkeley County, West Virginia with their mother, Diane Turner.
2. Following an accident where the children sustained injuries, their mother brought a civil action in the Circuit Court of Berkeley County, West Virginia. Mrs. Turner asserted that, on October 4, 2004, Charles Turner, Jr. was operating a vehicle in Berkeley County, West Virginia, with the permission of the owners, his father and stepmother, Charles Turner, Sr., and Laurie Turner. His children, Rhiannon, Dylan, and Ronan were passengers in the vehicle.
3. Ronan was seriously injured with multiple injuries that required a nearly month long hospital stay and several months of rehabilitation. Dylan and Rhiannon were also injured.
4. The children incurred medical costs. Ronan's total medical bills to date are \$111,088.19, Dylan's are \$5,473.85, and Rhiannon's are \$688.27.
5. The children's medical bills were paid first by the Westfield medical payments coverage held by Charles Turner, Sr. in the amount of \$5000.00 for each child.
6. Mrs. Turner acknowledged The Plan's subrogation rights in December, 2004. (See City Hosp. Inc.'s Obj. to Prop. Settlements and Mot. for Cont., Exh. B).
7. The balance of the children's medical bills was paid, for the most part, by the medical insurance provided by The Plan. The amounts paid through InforMed, the third party

administrator of The Plan, are as follows: Dylan: \$404.66, Rhiannon: \$184.96, and Ronan: \$106,697.08.

8. Mrs. Tuner reached a tentative settlement with Westfield and Nationwide on behalf of her children wherein she agreed to waive her interest in the settlements and to settle the children's cases within the policy limits so long as The Plan would be precluded by this court from asserting a lien. The policy limits on the Westfield policy are \$100,000 per person with \$300,000 per accident. The policy limits on the Nationwide policy are \$15,000 per person.

9. On April 20, 2007, The Plan filed an Objection to the Proposed Settlements as a Motion to Intervene, and a Motion to Continue.

10. At a hearing on June 22, 2007, the Court granted The Plan's Motion to Intervene. Thereafter, the Court directed the parties to submit briefs addressing The Plan's assertion of its subrogation rights in this matter, including but not limited to whether this Court has jurisdiction to consider the Petition for Approval of Minor's Settlements in light of ERISA's governance of The Plan.

11. By agreement of the parties, the timeframe for submitting written briefs to the Court was extended.

CONCLUSIONS OF LAW

1. The Circuit Court of Berkeley County has Jurisdiction to Approve or Disapprove the Proposed Minor's Settlements Submitted on Behalf of Dylan, Rhiannon, and Ronan Turner.

W. Va. Code § 44-10-14 (2002), which is the "Minor Settlement Proceedings Reform Act", gives circuit courts the authority to approve or disapprove of proposed settlements and releases of children's claims. Section 44-10-14 also gives circuit courts the authority to distribute infant settlement proceeds. Federal courts do not have the authority to rule upon infant

settlements absent federal question jurisdiction. See *Grusznski v. Viking Ins. Co.*, 854 F. Supp. 586 (E.D. Wis. 1994); *Pfefferle v. Solomon*, 718 F. Supp. 1413 (E.D. Wis. 1989).

Here, this Court is presented with the proposed settlements, releases, and distribution of Dylan, Rhiannon, and Ronan Turner, which were negotiated by their mother, Diane Turner. There is no federal question in the underlying claim; instead it is based on the negligence of Charles Turner, Jr. Therefore, this Court has jurisdiction to approve or disapprove, and distribute the infant's settlement and release of their claims.

Additionally, this Court must also consider The Plan's subrogation claim in granting or denying the infant's proposed settlements. Section 44-10-14(g) provides:

If the requested relief is granted, the court shall provide by order that an attorney appearing in the proceeding or other responsible person shall negotiate, satisfy and pay initial expense payments from settlement proceeds, the costs and fees incurred for the settlement and any bond required therefor, *expenses for treatment of the minor related to the injury at issue*, payments to satisfy any liens on settlement proceeds, if any, and such other directives as the court finds appropriate to complete the settlement and secure the proceeds for the minor. (emphasis added).

Therefore, this Court must consider The Plan's assertion of its claim to subrogation from the settlement proceeds when ruling on the Petitions for Approval of Minor's Settlements.

2. The Circuit Court of Berkeley County does not have jurisdiction to decide, limit, or enforce The Plan's subrogation rights to the Proposed Minor's Settlements Submitted on Behalf of Dylan, Rhiannon, and Ronan Turner.

Congress intended for ERISA's civil enforcement scheme to be exclusive. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987). 29 U.S.C. § 1132(e)(1) (2006) provides:

Except for actions under subsection (a)(1)(B)¹ of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, fiduciary, or any person referred to in section 1021(f)(1) of this title. State courts of competent

¹ Subsection (a)(1)(B) provides: A civil action may be brought by a participant or beneficiary to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan

jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under paragraphs (1)(B) and (7)² of subsection (a) of this section. 29 U.S.C.A. § 1132(e)(1).

Moreover, a fiduciary may bring a civil action in federal district court to seek equitable relief or to enforce the terms of the governing plan. 29 U.S.C. § 1132(a), § 502(a) provides:

A civil action may be brought... (3) by a participant, beneficiary, or *fiduciary* (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) *to obtain other appropriate equitable relief* (i) to redress such violations or (ii) to enforce any provisions of this subchapter *or the terms of the plan.* (emphasis added).

Here, The Plan is seeking equitable relief so that they may enforce the terms of the agreement. The Plan is effectively asking this Court to enjoin distribution of the infants' settlements so that it will be able to preserve it's rights under agreement. Additionally, The Plan is seeking reimbursement for money paid out under the plan. Pursuant to § 1132(e)(1), this Court does not have jurisdiction to decide, limit, or enforce The Plan's subrogation rights. Since The Plan is seeking equitable relief under § 502(a), this court does not have jurisdiction. Instead, The Plan must file an action in federal district court in order to exercise its subrogation rights.

The Plaintiff's argue that this Court has jurisdiction to decide, limit, or enforce the subrogation clause because the made whole doctrine, a creature of state law, applies. *See Kittle v. Icard*, 185 W.Va. 126 (1991); *Martine v. The Hertz Corp. & U.S. Benefit and Risk Mgmt. Inc.*, 103 F.3d 118 (4th Cir. 1995) (unpublished per curiam table decision). This Court recognizes that the made whole doctrine still has force and effect in West Virginia. However, the Plaintiffs fail to recognize that The Plan is asserting two equitable claims: one claim for reimbursement and another claim to enjoin the distribution of the settlement proceeds. While the made whole doctrine arguably acts to bar subrogation rights, it certainly does not give this Court jurisdiction

² Subsection (a)(7) provides: A civil action may be brought by a State to enforce compliance with a qualified medical child support order (as defined in section 1169(a)(2)(A) of this title).

to enjoin the settlement proceeds. The Plan's claim to enjoin the distribution of the settlement proceeds is clearly an equitable claim that places this question within the realm of federal jurisdiction as mandated by § 502(a).

RULING

Wherefore, the Court makes the following rulings:

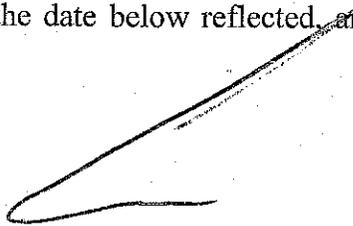
- 1) The Court HAS JURISDICTION to approve or disapprove of Dylan, Rhiannon, and Ronan Turner's proposed infant settlements as set forth in the three (3) separate Petitions for Approval of Minor's Settlements.
- 2) The Court DOES NOT HAVE JURISDICTION to decide, limit, or enforce The Plan's subrogation rights to the Proposed Minor's Settlements Submitted on Behalf of Dylan, Rhiannon, and Ronan Turner because ERISA preempts the state law claims asserted by the Plaintiffs.

The objections of the parties are duly noted, and this action is STAYED pending the next order of this Court pertaining to this case.

The Clerk is directed to enter this Order as of the date below reflected, and to send a certified copy to the counsel of record.

Entered:

September 26, 2007



**CHRISTOPHER C. WILKES, JUDGE
TWENTY-THIRD JUDICIAL CIRCUIT
BERKELEY COUNTY, WEST VIRGINIA**

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